

Nauratan Mal Daga and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Apr-03-2002

Reported in : 2003CriLJ694

Judge : B.K. Rathi, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482; Indian Penal Code (IPC) - Sections 120B and 420

Appeal No. : Cril. Misc. Appln. No. 1385 of 2000

Appellant : Nauratan Mal Daga and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : Rajiv Gupta, A.G.A.

Advocate for Pet/Ap. : Sashi Kant Gupta, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.K. Rathi, J.

1. This petition under Section 482, Cr.P.C. has been filed to quash the proceedings of complaint case No. 39 of 1994 Rajiv Gupta v. Nauratan and others

under Sections 420 and 120B, I.P.C. pending in the Court of IVth Addl. Chief Judicial Magistrate, Meerut and the orders passed in that case.

2. The complaint was filed by opposite party No. 2 which is Annexure-1 to the petition in which it was alleged that he is the manager of M/s. Mithlesh Handloom Factory which supply cloths to the dealers; that the revisionists who are resident of Alipur Dwar in West Bengal were known to the complainant from before and used to visit the premises of the complainant. On 11-3-1992 they visited the premises of the complainant and seen the clothes and booked order No. 491 and agreed to pay the price within two months of the receipt of the goods; that the goods were, therefore, supplied by the complainant during the period from 21-3-1992 to 31-3-1992. However, the revisionists did not pay the sale price in spite of promises to pay; that, therefore, it appears that the revisionists had mala fide intention from very beginning.

3. The learned Magistrate recorded the statement under Section 200, Cr.P.C. of the complainant and summoned the revisionists to stand trial under Sections 420 and 120B, I.P.C. The revisionists appeared and filed objections which were rejected by the learned Magistrate on 30-6-1997. Against that order, the revisionists preferred Criminal Revision No. 214 of 1997 which was rejected on 6-1-2000 by the VIIth Addl. District Judge, Meerut without hearing the counsel for the petitioners. Therefore, this petition has been preferred.

4. I have heard Sri S. K. Gupta, learned Counsel for the petitioners, Sri Rajiv Gupta, learned Counsel for opposite party No. 2 and the learned A.G.A. and have perused the entire record.

5. It has been contended that the dispute is purely of civil nature and the courts below have erred in summoning the petitioners on the above complaint.

6. I have already referred to the allegations made in the complaint. According to the complainant, the cloth was purchased and the price was agreed to be paid afterward, but the same was not paid. Therefore, even if the allegations of the complaint are accepted as gospel truth, the offence under Sections 420 and 120B, I.P.C. is not made out. It was a business transaction and the real dispute between

the parties is regarding the payment of the goods taken. The dispute is purely of civil nature and the complaint has been filed only with mala fide intention to harass the petitioners and to extract unlawful gain from them.

7. It has been argued by the learned Counsel for the opposite party that objections, Annexure-4 to the petition were filed before the Magistrate by the petitioners; that however, they have not alleged that they have not taken the delivery of the goods alleged by the complainant. This argument does not appear to be correct. In the objections, it has clearly been mentioned that the petitioners does not know the complainant, never met him and the complainant even could not identify them. Not only this, they have further mentioned that this fact can be verified by putting them for test identification from the complainant. Therefore, the allegation of the petitioners is that there has been absolutely no transaction between them nor there was any occasion for the transaction as alleged as they never met the complainant.

8. As against this, the complainant has alleged that the petitioners were known to him from before. However, it is not shown that they have ever purchased any article from the complainant prior to the articles in question.

9. The sole intention to file the complaint is to blackmail the petitioners who are resident of West Bengal. The learned Magistrate has not considered the facts in the right prospective and passed summoning order without application of mind and ignoring the principles laid down in the various cases by the Apex Court. The Apex Court in the case of M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate reported in (1998) 35 ACC 20 : (1997 All LJ 2406) (SC) has observed that 'Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the

Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answer to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused'.

10. The learned Magistrate has passed the order without application of mind and has not considered that no criminal offence is made out. He should remain very careful in summoning the accused persons in future at least in cases where the accused persons are resident of far off places.

11. The petition is, accordingly, allowed and the above complaint and all the orders passed thereon are quashed.

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